

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 05-10842-WGY

GERTRUDE GOROD,
Plaintiff,

v.

MASSACHUSETTS GENERAL
HOSPITAL, DR. WILLIAM BINDER,
JAMES W. MCCARTHY, ERIK
NORENIKA, SUSAN WARCHAL,
DIPLOMAT, CARUSO MUSIC,
LAWRENCE CARUSO,
Defendants.

**MOTION OF THE DEFENDANTS TO DISMISS
PLAINTIFF'S COMPLAINT FOR FAILURE TO POST BOND**

Now come the defendants in the above-captioned matter, and move this honorable Court pursuant to M.G.L. Ch. 231, §60B for an Order dismissing the plaintiff's Complaint for her failure to post the \$12,000 bond required by the Suffolk County Superior Court.

As grounds therefore, the defendants state as follows:

1. This is an action for malpractice, error or mistake within the terms of M.G.L. Ch. 231, §60B.
2. Pursuant to that statute, a medical malpractice tribunal was convened by the Suffolk County Superior Court on October 24, 2005. This case had been transferred to the Suffolk County Superior Court from the United States District Court for purposes of convening the medical malpractice tribunal, as requested by the defendants.

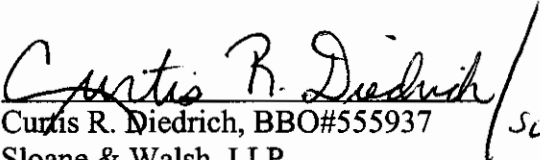
3. The plaintiff failed to appear at the medical malpractice tribunal, and failed to file an Offer of Proof with the Court as required by M.G.L. Ch. 231, §60B. After argument by counsel for the defendants, the tribunal found in favor of each of the defendants by Order dated October 24, 2005. (See Finding of Medical Malpractice Tribunal dated October 24, 2005, attached hereto as Exhibit 1). Pursuant to that Order, the Court required that the plaintiff post a bond in the amount of \$12,000 in order to proceed with her case.
4. By Order dated December 13, 2005 by the Suffolk County Superior Court, this matter was transferred back to the United States District Court. The Order transferring the matter back to the United States District Court indicated that no payment had been made by the plaintiff satisfying the Court's Order of October 24, 2005 (see Order of Suffolk County Superior Court dated December 13, 2005, attached hereto as Exhibit 2).
5. Pursuant to M.G.L. Ch. 231, §60B, the plaintiff had thirty (30) days in which to file the requisite bond or face dismissal of her Complaint.
6. Since more than thirty (30) days have elapsed, pursuant to the provisions of M.G.L. Ch. 231, §60B, the plaintiff's Complaint must be dismissed.

WHEREFORE, the defendants respectfully request that the plaintiff's Complaint be dismissed for her failure to post the \$12,000 bond required by this Court.

Respectfully submitted,

The Defendants,

By their Attorney,


Curtis R. Diedrich, BBO#555937
Sloane & Walsh, LLP
Three Center Plaza
Boston, MA 02108
(617) 523-6010

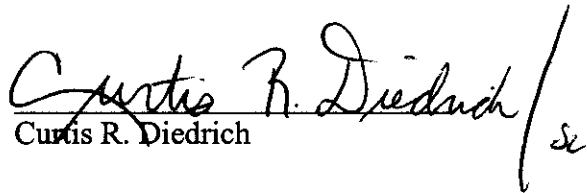
Dated: January 3, 2006

CERTIFICATE OF SERVICE

I, Curtis R. Diedrich, hereby certify that on this 3rd day of January, 2006, I served a copy of the within by mailing a copy of same, postage prepaid, to the following:

FOR THE PLAINTIFF:

Gertrude Gorod, Pro Se
P.O. Box 856
Everett, MA 02149


Curtis R. Diedrich

S:\GOROD, GERTRUDE V. MOH, ET AL. - 834-366-4135P\Images\Mockups\Motion of the Defendants to Dismiss Plaintiff's Complaint Re Failure to Post Bond 01-03-06.doc

EXHIBIT "1"

Notify
COMMONWEALTH OF MASSACHUSETTS

10-31-05

10-26-05 D

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 05-2334-E

Notice sent
10/26/2005

C. R. D.
S. & W.
G. G.

GERTRUDE GOROD,
Plaintiff

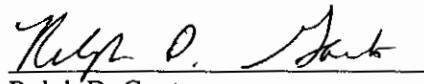
vs.

(sc) MASSACHUSETTS GENERAL HOSPITAL et al.,
Defendants

ORDER

A medical malpractice tribunal was conducted today in this case in accordance with G.L. c. 231, § 60B, at which the undersigned judge was the judicial member. The plaintiff, who is appearing *pro se*, neither appeared at the tribunal nor submitted an offer of proof. In view of this failure of proof, the tribunal found in favor of the defendants and the plaintiff therefore must file a bond with the Clerk of Court to avoid dismissal of her complaint. See G.L. c. 231, § 60B. Defense counsel orally moved at the hearing that the amount of the bond be more than the \$6,000 mandated by the statute, citing Denton v. Beth Israel Hospital, 392 Mass. 277 (1984). In view of the principles set forth in Denton, this Court finds, in its discretion, that the amount of the bond that should be filed in this action is \$12,000, twice the statutory amount.

This Court therefore ORDERS that this action shall be dismissed if the plaintiff fails, within thirty days of this Order, to post a bond in the amount of \$12,000.


Ralph D. Gants
Justice of the Superior Court

DATE: October 24, 2005

Commonwealth of Massachusetts

Notify

County of Suffolk
The Superior Court

10.26 ✓

CIVIL DOCKET# SUCV2005-02334

Gertrude Gorod

VS.

Massachusetts General Hospital

FINDING OF THE MEDICAL MALPRACTICE TRIBUNAL

(Pursuant to M.G.L. Chapter 231, Section 60(b) as amended)

Notice sent
10/26/2005

C. R. D.

S. & W.

G. G.

(sc)

The above entitled action came on for hearing before the appointed medical tribunal on **10/24/2005**, and was argued by counsel, and thereupon, upon consideration thereof, the plaintiff(s) offer of proof, pleadings, hospital records and other documents presented, the tribunal finds:

~~*(1) For the plaintiff(s) _____ and that the evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry.~~

*(2) For defendant(s) Maslach v. Gerald Hospital because the plaintiff(s) _____ action is merely an unfortunate medical result.

If a finding is made for the defendant or defendants in the above entitled action **the plaintiff may pursue the claim through the usual judicial process only upon filing bond in the amount of Six Thousand (\$6,000.00) Dollars in the aggregate** secured by cash or its equivalent with the Clerk/Magistrate of this court, payable to the defendant or defendants in said action for costs assessed, including witness and expert fees and attorneys fees if the plaintiff(s) does/do not prevail in the final judgment. The presiding justice may, withing his/her discretion, increase the amount of the bond required to be filed. **If said bond is not posted within thirty (30) days of the tribunal's finding the action shall be dismissed.** Upon motion filed by the plaintiff(s), and a determination by the court that the plaintiff(s) is/are indigent said justice may reduce the amount of the bond but may not eliminate the requirement thereof.

Dated: 10/24/2005

Justice of the Superior Court

Legal Member:

Medical Member:

***strike inapplicable words**

cm

Wesley D. Galt
Associate Justice of the Superior Court Dept.

William Foley
Attorney - Tribunal Member

K. H. H. H.
*Physician - Tribunal Member

~~*Health Care Provider - Tribunal Member~~

Commonwealth of Massachusetts
County of Suffolk
The Superior Court

10-26

CIVIL DOCKET# SUCV2005-02334

Gertrude Gorod

vs.

Erik Norenika

Notice sent
10/26/2005

C. R. D.
S. & W.
G. G.

FINDING OF THE MEDICAL MALPRACTICE TRIBUNAL
(Pursuant to M.G.L. Chapter 231, Section 60(b) as amended)

The above entitled action came on for hearing before the appointed medical tribunal on (sc)
10/24/2005, and was argued by counsel, and thereupon, upon consideration thereof, the plaintiff(s) offer of proof, pleadings, hospital records and other documents presented, the tribunal finds:

* (1) For the plaintiff(s) _____ and that the evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry.

MM * (2) For defendant(s) Erik Norenika because the plaintiff(s) _____ action is merely an unfortunate medical result.

If a finding is made for the defendant or defendants in the above entitled action **the plaintiff may pursue the claim through the usual judicial process only upon filing bond in the amount of Six Thousand (\$6,000.00) Dollars in the aggregate** secured by cash or its equivalent with the Clerk/Magistrate of this court, payable to the defendant or defendants in said action for costs assessed, including witness and expert fees and attorneys fees if the plaintiff(s) does/do not prevail in the final judgment. The presiding justice may, withing his/her discretion, increase the amount of the bond required to be filed. **If said bond is not posted within thirty (30) days of the tribunal's finding the action shall be dismissed.** Upon motion filed by the plaintiff(s), and a determination by the court that the plaintiff(s) is/are indigent said justice may reduce the amount of the bond but may not eliminate the requirement thereof.

Dated: 10/24/2005

Justice of the Superior Court

Legal Member:

Medical Member:

*strike inapplicable words

cm

Walter D. Hunt

Associate Justice of the Superior Court Dept.

William J. Feely

Attorney - Tribunal Member

Dr. Fred MD

*Physician - Tribunal Member

*Health Care Provider - Tribunal Member

Commonwealth of Massachusetts

County of Suffolk
The Superior Court

10.700

CIVIL DOCKET# SUCV2005-02334

Gertrude Gorod

vs.

Dr William Binder

Notice sent
10/26/2005

C. R. D.
S. & W.
G. G.

FINDING OF THE MEDICAL MALPRACTICE TRIBUNAL
(Pursuant to M.G.L. Chapter 231, Section 60(b) as amended)

The above entitled action came on for hearing before the appointed medical tribunal on **10/24/2005**, and was argued by counsel, and thereupon, upon consideration thereof, the plaintiff(s) offer of proof, pleadings, hospital records and other documents presented, the tribunal finds: (sc)

*(1) For the plaintiff(s) _____ and that the evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry.

Mr. *(2) For defendant(s) Dr. William Binder because the plaintiff(s) _____ action is merely an unfortunate medical result.

If a finding is made for the defendant or defendants in the above entitled action **the plaintiff may pursue the claim through the usual judicial process only upon filing bond in the amount of Six Thousand (\$6,000.00) Dollars in the aggregate** secured by cash or its equivalent with the Clerk/Magistrate of this court, payable to the defendant or defendants in said action for costs assessed, including witness and expert fees and attorneys fees if the plaintiff(s) does/do not prevail in the final judgment. The presiding justice may, withing his/her discretion, increase the amount of the bond required to be filed. **If said bond is not posted within thirty (30) days of the tribunal's finding the action shall be dismissed.** Upon motion filed by the plaintiff(s), and a determination by the court that the plaintiff(s) is/are indigent said justice may reduce the amount of the bond but may not eliminate the requirement thereof.

Dated: 10/24/2005

Justice of the Superior Court

Legal Member:

Medical Member:

*strike inapplicable words

cm

Therese P. Sant
Associate Justice of the Superior Court Dept.

William J. Foley
Attorney - Tribunal Member

R. M. M.
*Physician - Tribunal Member

Health Care Provider - Tribunal Member

Commonwealth of Massachusetts

County of Suffolk
The Superior Court

10/26/05

CIVIL DOCKET# SUCV2005-02334

Gertrude Gorod

vs.

James W McCarthy

FINDING OF THE MEDICAL MALPRACTICE TRIBUNAL
(Pursuant to M.G.L. Chapter 231, Section 60(b) as amended)

Notice sent
10/26/2005

C. R. D.
S. & W.
G. G.

The above entitled action came on for hearing before the appointed medical tribunal on (sc)
10/24/2005, and was argued by counsel, and thereupon, upon consideration thereof, the plaintiff(s) offer of proof, pleadings, hospital records and other documents presented, the tribunal finds:

*(1) For the plaintiff(s) _____ and that the evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry.

7m *(2) For defendant(s) James McCarthy because the plaintiff(s) _____ action is merely an unfortunate medical result.

If a finding is made for the defendant or defendants in the above entitled action **the plaintiff may pursue the claim through the usual judicial process only upon filing bond in the amount of Six Thousand (\$6,000.00) Dollars in the aggregate** secured by cash or its equivalent with the Clerk/Magistrate of this court, payable to the defendant or defendants in said action for costs assessed, including witness and expert fees and attorneys fees if the plaintiff(s) does/do not prevail in the final judgment. The presiding justice may, with his/her discretion, increase the amount of the bond required to be filed. **If said bond is not posted within thirty (30) days of the tribunal's finding the action shall be dismissed.** Upon motion filed by the plaintiff(s), and a determination by the court that the plaintiff(s) is/are indigent said justice may reduce the amount of the bond but may not eliminate the requirement thereof.

Dated: 10/24/2005

Justice of the Superior Court

Legal Member:

Medical Member:

*strike inapplicable words

cm

Keip A. Jett
Associate Justice of the Superior Court Dept.

William Foley
Attorney - Tribunal Member

R. Fran
*Physician - Tribunal Member

Health Care Provider
*Health Care Provider - Tribunal Member

Commonwealth of Massachusetts

County of Suffolk
The Superior Court

Notice sent
10/26/2005

C. R. D.

S. & W. G. G. (sc)

CIVIL DOCKET# SUCV2005-02334

Gertrude Gorod

vs.

Susan Warchal

FINDING OF THE MEDICAL MALPRACTICE TRIBUNAL
(Pursuant to M.G.L. Chapter 231, Section 60(b) as amended)

The above entitled action came on for hearing before the appointed medical tribunal on 10/24/2005, and was argued by counsel, and thereupon, upon consideration thereof, the plaintiff(s) offer of proof, pleadings, hospital records and other documents presented, the tribunal finds:

*~~(1) For the plaintiff(s)~~ and that the evidence presented ~~if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry.~~

na *~~(2) For defendant(s)~~ Susan Warchal because the plaintiff(s) action is merely an unfortunate medical result.

If a finding is made for the defendant or defendants in the above entitled action **the plaintiff may pursue the claim through the usual judicial process only upon filing bond in the amount of Six Thousand (\$6,000.00) Dollars in the aggregate** secured by cash or its equivalent with the Clerk/Magistrate of this court, payable to the defendant or defendants in said action for costs assessed, including witness and expert fees and attorneys fees if the plaintiff(s) does/do not prevail in the final judgment. The presiding justice may, withing his/her discretion, increase the amount of the bond required to be filed. **If said bond is not posted within thirty (30) days of the tribunal's finding the action shall be dismissed.** Upon motion filed by the plaintiff(s), and a determination by the court that the plaintiff(s) is/are indigent said justice may reduce the amount of the bond but may not eliminate the requirement thereof.

Dated: 10/24/2005

Justice of the Superior Court

Legal Member:

Medical Member:

*strike inapplicable words

cm

Ralph D. Jank
Associate Justice of the Superior Court Dept.

William J. Foley
Attorney - Tribunal Member

R. Khan
*Physician - Tribunal Member

Health Care Provider - Tribunal Member

EXHIBIT "2"

05-10842-WGY

17

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO: 2005-2334E

Gertrude Gorod
PLAINTIFF

V.

Massachusetts General Hospital et al.
DEFENDANT

ORDER

AFTER A MEDICAL MALPRACTICE TRIBUNAL HEARING IN SUFFOLK
SUPERIOR COURT:

THE ABOVE ENTITLED ACTION IS HEREBY ORDERED RETURNED TO
THE United States District Court : DOCKET #05-10842-WGY

(SEE P. 16 NO PAYMENT HAS BEEN MADE IN SUFFOLK SUPERIOR COURT)

BY THE COURT, (Botsford, J.)


ASST. CLERK

DATED: December 13, 2005

Notice sent 12/13/05

G.G.

STW - C.R.D.

PC

1216

COMMONWEALTH OF MASSACHUSETTS

10-26-16

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 05-2334-E

Notice sent
10/26/2005

C. R. D.
S. & W.
G. G.

GERTRUDE GOROD,
Plaintiff

vs.

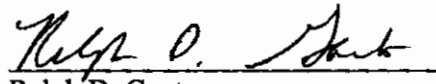
(sc)

MASSACHUSETTS GENERAL HOSPITAL et al.,
Defendants

ORDER

A medical malpractice tribunal was conducted today in this case in accordance with G.L. c. 231, § 60B, at which the undersigned judge was the judicial member. The plaintiff, who is appearing *pro se*, neither appeared at the tribunal nor submitted an offer of proof. In view of this failure of proof, the tribunal found in favor of the defendants and the plaintiff therefore must file a bond with the Clerk of Court to avoid dismissal of her complaint. See G.L. c. 231, § 60B. Defense counsel orally moved at the hearing that the amount of the bond be more than the \$6,000 mandated by the statute, citing Denton v. Beth Israel Hospital, 392 Mass. 277 (1984). In view of the principles set forth in Denton, this Court finds, in its discretion, that the amount of the bond that should be filed in this action is \$12,000, twice the statutory amount.

This Court therefore **ORDERS** that this action shall be dismissed if the plaintiff fails, within thirty days of this Order, to post a bond in the amount of \$12,000.


Ralph D. Gants
Justice of the Superior Court

DATE: October 24, 2005

MASXP-20050816
carangel

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket

12/13/2005
02:10 PM

SUCV2005-02334
Gorod v Massachusetts General Hospital et al

File Date	06/09/2005	Status	Disposed: transfered to other court (dtrans)	
Status Date	12/13/2005	Session	E - Civil E, 3 Pemberton Sq, Boston	
Origin	91	Case Type	Z01 - Med malpractice hrg only (231,60B)	
Lead Case		Track	X	
Service		Answer	Rule 12/19/20	
Rule 15		Discovery	Rule 56	
Final PTC		Disposition	01/05/2006	Jury Trial Yes

PARTIES

Plaintiff

Gertrude Gorod
P O Box 856
Everett, MA 02149
Active 06/09/2005 Notify

Defendant

Massachusetts General Hospital
Answered: 06/09/2005
Answered 06/09/2005

Private Counsel 555937

Curtis R Diedrich
Stoane & Walsh
3 Center Plaza
8th Floor
Boston, MA 02108
Phone: 617-523-2950
Fax: 617-227-0927
Active 06/09/2005 Notify

Defendant

Dr William Binder
Answered: 06/09/2005
Answered 06/09/2005

*** See Attorney Information Above ***

Defendant

James W McCarthy
Answered: 06/09/2005
Answered 06/09/2005

*** See Attorney Information Above ***

MASXP-20050816

carangel

Case 1:05-cv-10842-WGY Document 16 Filed 12/16/2005 Page 2 of 4

Commonwealth of Massachusetts

SUFFOLK SUPERIOR COURT

Case Summary

Civil Docket

12/13/2005

02:10 PM

SUCV2005-02334

Gorod v Massachusetts General Hospital et al

Defendant

Erik Norenika

Answered: 06/09/2005

Answered 06/09/2005

*** See Attorney Information Above ***

Defendant

Susan Warchal

Answered: 06/09/2005

Answered 06/09/2005

*** See Attorney Information Above ***

Defendant

Diplomat

Service pending 06/09/2005

Defendant

Caruso Music

Service pending 06/09/2005

Defendant

Lawrence Caruso

Service pending 06/09/2005

ENTRIES

Date	Paper	Text
06/09/2005		Medical malpractice hearing only (231,60B); docket #05-10842-WGY pending in U.S. District Court
06/09/2005		Origin 91, Type Z01, Track X.
06/09/2005	1.0	Copy of Complaint & Jury demand
06/09/2005	2.0	Copy of ANSWER & Jury demand: Defendant Massachusetts General Hospital (all issues)
06/09/2005	3.0	Copy of ANSWER & Jury demand: Defendant Dr William Binder (all issues)

MASXP-20050816
carangel

Case 1:05-cv-10842-WGY Document 16 Filed 12/16/2005 Page 3 of 4

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket12/13/2005
02:10 PM

SUCV2005-02334

Gorod v Massachusetts General Hospital et al

Date	Paper	Text
06/09/2005	4.0	Copy of ANSWER & Jury demand: Defendant James W McCarthy (all issues)
06/09/2005	5.0	Copy of ANSWER & Jury demand: Defendant Erik Norenika (all issues)
06/09/2005	6.0	Copy of ANSWER & Jury demand: Defendant Susan Warchal (all issues)
06/09/2005	7.0	Copy of Defendant Massachusetts General Hospital, Dr William Binder, James W McCarthy, Erik Norenika & Susan Warchal's MOTION to Transfer the claims against them to the Massachusetts Superior Court for the purpose of convening a Medical Malpractice Tribunal pursuant to M.G.L. Ch. 231, Sec. 60B - Motion Allowed. Case ordered administratively closed until the report of the medical malpractice tribunal is received. (William G. Young, Chief Judge)
06/09/2005	8.0	Copy of ORDER: Pursuant to the Order entered June 6, 2005, this case is hereby referred to the Massachusetts Superior Court for the purpose of convening a medical malpractice tribunal. (Young, C.J.)
06/09/2005	9.0	Attested copy of docket entries received from U.S. District Crt
06/09/2005	10.0	Civil action cover sheet re: Malpractice
10/31/2005	11.0	Medical malpractice tribunal report: as to Massachusetts General Hospital that there is not sufficient evidence to raise a legitimate question as to liability appropriate for judicial inquiry. (Ralph Gants, Justice) Copies mailed 10/26/2005 (entered 10/24/05)
10/31/2005	12.0	Medical malpractice tribunal report: as to Erik Norenika that there is not sufficient evidence to raise a legitimate question as to liability appropriate for judicial inquiry. (Ralph Gants, Justice) Copies mailed 10/26/2005 (entered 10/24/05)
10/31/2005	13.0	Medical malpractice tribunal report: as to Dr William Binder that there is not sufficient evidence to raise a legitimate question as to liability appropriate for judicial inquiry. (Ralph Gants, Justice) Copies mailed 10/26/2005 (entered 10/24/05)
10/31/2005	14.0	Medical malpractice tribunal report: as to James W McCarthy that there is not sufficient evidence to raise a legitimate question as to liability appropriate for judicial inquiry. (Ralph Gants, Justice) Copies mailed 10/26/2005 (entered 10/24/05)
10/31/2005	15.0	Medical malpractice tribunal report: as to Susan Warchal that there is not sufficient evidence to raise a legitimate question as to liability appropriate for judicial inquiry. (Ralph Gants, Justice) Copies mailed 10/26/2005 (entered 10/24/05)
10/31/2005	16.0	ORDER that this action shall be dismissed if the plff fails, within 30 days of this order, to post a bond in the amount of \$12,000.00 (Ralph Gants, Justice) (entered 10/24/05) notice sent 10/26/05
12/13/2005	17.0	ORDER: After a Medical Malpractice Tribunal hearing in Suffolk Superior Court: The above entitled action is hereby Ordered returned to the United States District Court: Docker #05-10842-WGY, (Botsford, J.) Notice sent 12/13/05
12/13/2005		TRANSFERRED TO USDC

EVENTS

MASXP-20050816
carangel

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket

12/13/2005
02:10 PM

SUCV2005-02334
Gorod v Massachusetts General Hospital et al

Date	Session	Event	Result
10/24/2005	Civil E, 3 Pemberton Sq, Boston	Malpractice tribunal held in Room 1017	Event held as scheduled

I HEREBY ATTEST AND CERTIFY ON

12-13-05 THAT THE
FORWARDED DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOHUE
CLERK (JUDGE) CLERK
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY: 